IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10549 of 2004

to

SPECIAL CIVIL APPLICATIONNo 10555 of 2004

and
SPECIAL CIVIL APPLICATION No.10557 of 2004
to
SPECIAL CIVIL APPLICATION No.10559 of 2004
and
SPECIAL CIVIL APPLICATION No.10561 of 2004
to
SPECIAL CIVIL APPLICATION No.10564 of 2004,

SPECIAL CIVIL APPLICAITON No.10566 of 2004
and
SPECIAL CIVIL APPLICATION No.10568 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

RASHMI B. CHAVDA THROUGH HIS LEGAL HEIR

Appearance:

MR HARDIK C RAWAL for Petitioner in all the matters.

MR K.M.PAUL for the respondents in SCA Nos.10550, 10552, 10554, 10555, 10557 and 10566 of 2004.

RULE SERVED for rest of the respondents.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/12/2004

ORAL JUDGEMENT

Though this group of petitions was placed before this Court for confirmation of the interim relief, considering the issues involved, learned counsel appearing for the parties requested for final disposal of the petitions.

2. The petitions are, therefore, heard today for final disposal.

3. Since identical questions of law are involved in this group of petitions, they are heard together and being disposed of by this common judgement.

4. In this group of petitions filed by the Gujarat State Road Transport Corporation, what is challenged is a common order dated 8.4.2004, by which the Labour Court, Kutch was pleased to allow the Recovery Applications filed by the workmen.

5. The short facts leading to these petitions are that the respective petitioner in each petition was employed by the petitioner Corporation. The respondents approached the Labour Court, Kutch by filing Recovery Applications under section 33-C(2) of the Industrial Disputes Act complaining of short payment of gratuity to them by the petitioner. The Labour Court finding that certain amounts were required to be paid to the respondents by way of gratuity, allowed the Recovery Applications by the impugned order dated 8.4.2004.

6. Appearing for the petitioner in this group of petitions, learned counsel Shri Hardik Raval has challenged the impugned order mainly on two grounds. Firstly, it was contended that the claim of the workmen was for the payment of gratuity and therefore, the Recovery Application under section 33-C(2) of the

Industrial Disputes Act was not maintainable. It was contended that the only remedy available to the workmen was to file appropriate application under the provisions of the Payment of Gratuity Act before the Controlling Authority.

The second contention raised by the petitioner was that the Labour Court allowed the recovery applications without there being sufficient material on record to grant such relief. It was contended that on the basis of the available material on record, the Labour Court could not have awarded the amounts as prayed for by the workmen.

7. Appearing for the workmen Shri K.M. Paul, learned counsel has sought to support the order of the Labour Court.

It is the contention on behalf of the respondents that the Labour Court rightly exercised the jurisdiction under section 33-C(2) of the Industrial Disputes Act, since the payment of gratuity claimed by the workmen was not under the Payment of Gratuity Act, but was for unpaid gratuity under a settlement entered into by the petitioner with the Union. It was further contended that the application under the provisions of the Payment of Gratuity Act would not be maintainable and the appropriate remedy to file application under section 33-C(2) of the Industrial Disputes Act, which was rightly entertained by the Labour Court.

With respect to the question of computation of unpaid gratuity, it was contended that it was correctly found that the amounts in question were not paid to the workmen and on the basis of the material on record the Labour Court correctly directed the payment thereof. He submits that the amounts involved are also very small and therefore, no interference is otherwise also called for.

8. Having considered the rival submissions, it appears that there is hardly any dispute about the fact that the respondents in these petitions had approached the Labour Court by filing application under section 33-C(2) of the Industrial Dispute Act claiming recovery of unpaid gratuity under the settlement between the petitioner and its employees. This aspect has been noted by the Labour Court in its impugned order. As noted earlier, there is no serious dispute raised by the petitioner also about the factual aspect of the matter. In the affidavit in reply filed by the respondents, it is further pointed out that before initiating the

proceedings under section 33-C(2) of the Industrial Disputes Act, the concerned respondents had written a letter dated 21.6.1995 to the authorities under the Payment of Gratuity Act. In response to the said letters, by communication dated 13.7.1995, it was conveyed to the workmen concerned that pursuant to the decision of the Division Bench of this Court, since the recovery sought is for unpaid gratuity under the settlement, the proceedings under section 33-C(2) of the Industrial Disputes Act would be maintainable. The counsel for the respondents has also pointed out that the petitioner herein had raised a preliminary objection to the maintainability of the recovery proceedings before the Labour Court and the Labour Court by its order dated 31.1.94, relying on the decision of the Division Bench of this Court had turned down the said contention and held that the proceedings under section 33-C(2) of the Industria Disputes Act would be maintainable. This order of the Labour Court was not challenged by the petitioner.

9. In support of his contention that applications under section 33-C(2) of the Industrial Disputes Act were not maintainable, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Punjab v. Labour Court, Jullundur, AIR 1979 SC 1981. In the said decision, it was held that the Payment of Gratuity Act enacts a complete code containing detailed provisoins covering all the essential features of a scheme for payment of gratuity. It was further held that the Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other provisions. It was therefore held in that case that application under section 33-C(2) of the Industrial Disputes Act did not lie and the Labour Court had no jurisdiction to entertain the same.

10. Reliance was also placed on the decision of the learned Single Judge of this Court wherein by judgement dated 12.7.2004, passed in Special Civil Application No.6460 of 1989 with allied matters in the case of Savaigar M.Gosai & Ors. Vs. Managing Director, GSRTC & Ors., learned Judge was pleased to come to the conclusion that the recovery application under section 33-C(2) of the Industrial Disputes Act for recovery of unpaid gratuity would not be maintainable.

11. I find that the question of maintainability of recovery application under section 33-C(2) of the Industrial Disputes Act where the employee is claiming

the benefits of unpaid gratuity under a settlement between the employer and employee has been considered and settled by various decisions of this High Court. In the judgment dated 5th September 1991 rendered in Special Civil Application No.6226/91 in the case of GSRTC V. Pruthvirajji R. Zala, a Division Bench of this High Court fond that when the claim of the employe was for payment of gratuity which was based on settlement and not under the provisions of the Payment of Gratuity Act, the ratio laid down by the decision of the Hon'ble Supreme Court in the case of State of Punjab v. Labour Court, Jullundur (supra) would not apply and the Division Bench was pleased to uphold the order passed by the Labour Court under section 33-C(2) of the Industrial Disputes Act for payment of unpaid gratuity under the settlement.

12. This decision was followed by the learned single Judge of this High Court in the case of Gujarat Road Transport Corporation v. Karsan Meghji Dabhi reported in 38(2) GLR 1396. After considering the deicsion of the Division Bench of this High Court in the case of GSRTC v. Pruthvirajji Zala (supra) and after considering the provisions of the Payment of Gratuity Act as well as under section 33-C(2) of the Industrial Disputes Act, the learned single Judge found that the Labour Court was justified in rejecting the objection of the Corporation regarding maintainability of the recovery application under section 33-C(2) of the Industrial Disputes Act since the claim pertained to unpaid gratuity under the settlement.

Once again, learned single Judge of this High Court in the case of Master Silk Mills Pvt. Ltd. v. Ibrahim Habib, reported in 2000 (2) GLH 388 was pleased to reiterate this proposition. In the said decision it was held that application under section 33-C(2) of the Industrial Disputes Act was maintainable for claim for payment of gratuity which was based on a right accrued under a settlement.

13. In view of the consistent view followed by this High Court to the effect that when the claim made by the employee is for payment of gratuity which claim is emerging from the settlement between the employer and the employees and not under the Payment of Gratuity Act, the Labour court under section 33-C(2) of the Industrial Disputes Act would have jurisdiction to entertain a recovery application, I am unable to accept the contention raised on behalf of the petitioner that recovery applications filed by the respondents were not maintainable. As noted earlier, the decision of the

Hon'ble Supreme Court in the case of State of Punjab v. Labour Court, Jullundur (supra) was cited and considered by the earlier Benches while adopting this ratio, but found that the said decision would have no application to the facts of the case where the claim for gratuity emanates from a settlement not under the Payment of Gratuity Act. I am also unable to see any conflict with the decision of this High Court wherein a view was taken that for recovery of unpaid gratuity under a settlement, an application under section 33-C(2) of the Industrial Disputes Act would be maintainable and the decision of the learned singel Judge in the case of Savaigar M. Gosai v. Managing Director of GSRTC (supra) since in the decision of Savaigar M.Gosai, the question of recovery of unpaid gratuity under a settlement was not invovled.

14. Adverting to the merits of the orders under challenge, I find that the Labour Court had allowed the recovery applications of the respondents without proper justification available in the order. If there was sufficient material on record, the same has not been discussed in the impugned order for allowing the applications. Recovery applications could not have been allowed without coming to a definite finding of fact that the respondents herein were entitled to receive amounts in excess of what were already paid to them. Therefore, while rejecting the contention raised on behalf of the petitioners with respect to the maintainability of the recovery application, I find that the recovery applications are required to be considered afresh by the Labour Court, if necessary by permitting both the sides to lead further evidence, if so desired.

15. In the result, the petitions are allowed on this limited ground. Recovery Applications are remanded to the Labour Court for fresh adjudication bearing in mind the observations made hereinabove. The Labour Court will try to dispose of these recovery applications as expeditiously as possible preferably within four months from the date of receipt of a copy of this

16. The amounts involved in these recovery applications are, in most cases, quite small. Therefore, even while remanding the recovery applications for fresh adjudication, I permit the respondents to approach the petitioners with supporting material in support of their claim for unpaid gratuity. It is expected that if the respondents make out a valid case for grant of unpaid gratuity, the petitioners shall consider their demands and would not drive the respondents to further litigation and consideration of the recovery application on merits.

With these observations and findings, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)